Phillip W. Dunn, [illegible]
CSATF & State Prison
P.O. Box 5248
Corcoran, CA 93212

FILED
AUG 1 1 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

In The United States District Court
For The Southern District of California

Phillip W. Dunn,
Petitioner,

V.

Ken Clark, Warden
Respondent,

08-0485 BTM (JMA)

Petitioners motion to The Attorney Generals motion to Dismiss

The Honorable Judge J. Adler

Introduction

I Am Currently In The ASU At CSATF & State Prison. I Am And Have Been Subjected to Major Retaliation By The medical Department And other Staff. A Lun K. Burson Lied to put me in this Situation; This Has placed A Great Hardship on me. As I Do not Have Access to certain Things I Need Both legally And medically Speaking. I would Ask the Court to understand The Adverse conditions from which I Am Pleading. This will Be A logical Legal Arguement As opposed to A lengthy Points And Authorities Debate. The Attorney Generals office (AG) is well Aware of my Problems with the medical System As they Have Been Contacted many times to resolve Them

STATEMENT IN SUPPORT OF CASE FACTS.

The Issue Before the court deals with a couple of key Issues. Issues I Believe Have Not Been Heard or Ruled on. The AG States That I Have Run out of time. That the writ Before you is untimely And Not Retro Active. Yet Cunningham was given Relief After Fourteen (14) years.

Just Because The exact word Retro Active did Not Appear in the united state Supreme Court Ruling does not mean the Spirit of the Law was Lacking in it's Attempt to Bring The Unconstitutional Sentenceing practices used in the California Courts to Bear.

When I made The Initial Fileing of this writ in the Superior Court of San diego. No mention was made of time limitations or Final Judgements, Because That court knew prisoners would Be Seeking Relief under the New Ruleing.

The AG's Comment About the muddled portion of that Responce, I found quite clear. It stated that All tho Booker, Blake Apprendi, And Now Cunningham Had Been decided, It did not Apply to me. I Appealed that decision thru All the levels of the California Court System And Still A Major portion of that writ Has gone Unanswered.

Cunningham v. California States that the "dual usage" of a prior is an unconstitutional practice, yet California Insists the Supreme Court is wrong! In my writ to the San diego Superior Court I make A Claim that to date Has gone unchallenged.

The Kidnapping case As Being A direct violation of Sentenceing As described in Cunningham As well As Romero. I Have Sought out the Clerk of the court in San diego, to provide me with an Abstract

The cunningham decision was made last year. I filed with what has to date gone unanswered by all but the lower court and it's decision did not include an answer to the prima facia pleading of the writ. I would ask the court not to dismiss the pleadings but to see it for what it is an illegal sentence stacked on top of an illegal sentence. It is for this reason I seek relief and none other. While california fears litigation from prisoners freed under these new cases. It should be no reason to deny me the ruling I seek. The AG has made no new statements. He has not proved that the recent cunningham case is not retro active and just because the kidnapping was in 1993 does not mean it is not currently effecting me on this commitment term. If looked at thru the glass I have been given Eighteen (18) years for a charge I should have had the middle term for. The dual usage and the kidnapping are both unconstitutional sentenceing practices!

Respectfully Submitted

[signature]

Phillip Dunn

Litigant pro se

T-79951

ASU-126L

DATE: 8-7-08

08-cv-0485

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE
SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM
[Not to be used for multiple count convictions or for 1/3 consecutive sentences.]

CR-290.1

☒ SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
☐ MUNICIPAL BRANCH OR JUDICIAL DISTRICT EL CAJON

PEOPLE OF THE STATE OF CALIFORNIA vs.
DEFENDANT: PHILLIP WAYNE DUNN
DOB: 02-04-60
AKA:
CII#: 06262508
BOOKING #: 02117345
☐ NOT PRESENT

CASE NUMBER
SCE221319

COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT
☐ AMENDED ABSTRACT

DATE OF HEARING	DEPT. NO.	JUDGE
02-03-03	11	HERBERT J. EXARHOS

CLERK	REPORTER	PROBATION NO. OR PROBATION OFFICER
A. NARDUCCI	TAMMY NIELSEN, CSR #9143	IMMEDIATE SENTENCING

COUNSEL FOR PEOPLE: MICHAEL PRZYTULSKI
COUNSEL FOR DEFENDANT: JACKIE CROWLE, ALTERNATE PUBLIC DEFENDER ☒ APPTD.

1. Defendant was convicted of the commission of the following felony:

CNT.	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY JURY	CONVICTED BY COURT	CONVICTED BY PLEA	TERM (L, M, U)	TIME IMPOSED YRS.	TIME IMPOSED MOS.
1	PC	459*/460/667.5(c)(21)	Residendial Burglary 1st Degree	2002	02-03-03			X	M	8	0

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL	

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTION OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL	
PC 667(c)(21)	5							5	0

4. ☒ Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).
5. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):
   a. RESTITUTION FINE of: $500.00 per PC 1202.4(b) forthwith per PC 2085.5.
   b. RESTITUTION FINE of: $500.00 per PC 1202.45 suspended unless parole is revoked.
   c. RESTITUTION of: $TBD per PC 1202.4(f) to ☒ victim(s)* ☐ Restitution Fund
   (*List victim name(s) if known and amount breakdown in item 7, below.)
   (1) ☒ Amount to be determined. (2) ☐ Interest rate of: __% (not to exceed 10% per PC 1202.4(f)(3)(F)).
   d. ☐ LAB FEE of: $____ for counts: _____ per H&SC 11372.5(a).
   e. ☐ DRUG PROGRAM FEE of $150 per H&SC 11372.7(a). f. ☐ FINE of $___ per PC 1202.5.
6. TESTING: ☐ AIDS ☐ DNA pursuant to ☐ PC 1202.1 ☐ PC 290.2 ☒ other *(specify)*: PC 296
7. Other orders *(specify)*: PROBATION TO SUBMIT POST-SENTENCE REPORT DIRECTLY TO THE D. O. C. PER PC 1203c RE: CREDITS AND RESTITUTION. PC 667(a)(1) shall run consecutively to Count 1.

8. TOTAL TIME IMPOSED: 13 | 0

9. ☐ This sentence is to run concurrent with *(specify)*:
10. Execution of sentence imposed
    a. ☒ at initial sentencing hearing.
    b. ☐ at resentencing per decision on appeal.
    c. ☐ after revocation of probation.
    d. ☐ at resentencing per recall of commitment. (PC 1170(d).)
    e. ☐ other *(specify)*:

11.

DATE SENTENCE PROUNOUNCED	CREDIT FOR TIME SPENT IN CUSTODY	TOTAL DAYS:	ACTUAL LOCAL TIME	LOCAL CONDUCT CREDITS		SERVED TIME IN STATE INSTITUTION
02-03-04		TBD INCLUDING:	15	5	☐ 4019 ☐ 2933.1	☐ DMH ☐ CDC ☐ CRC

12. The defendant is remanded to the custody of the sheriff ☐ forthwith ☒ after 48 hours excluding Saturdays, Sundays, and holidays.
    To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.
    ☐ other *(specify)*:

CLERK OF THE COURT: I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE	DATE
J. STURGEON	02-04-03

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

PROOF OF SERVICE BY MAIL

I declare that:

I am (resident of / employed in) the county of Kings California. I am over the age of eighteen years, my (~~business~~ / residence) address is:

Phillip W. Dunn, T-77951, ASU-126L
CSATF & STATE PRISON, P.O. BOX 5248, Corcoran, CA 93212

On Thursday, August 7th 2008, I served the attached

Motion in response to the attorney Generals motion to Dismiss
motion for appointment of Counsel

on the 7th of August 2008 in said case, by placing a true copy there of enclosed in a sealed envelope with postage thereon fully paid, in the United States mail at CSATF & State prison addressed as follows

(1) Clerk of the Court In the United States District Court For the Southern District California 880 Front Street San Diego CA 92101 · And in another mailing Mr. K. Vienna, Deputy Attorney General/office of the Attorney General 110 West "A" Street, Suite 1100
(2) San Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on (date) August 7th, 2008, at Corcoran California.

Type or print name Phillip W. Dunn, Petitioner Pro Se

Signature [signature]